

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5185 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KNACK HOT PLATES IND PVT LTD

Versus

VIJAY CO-OP BANK LTD

Appearance:

MR BB DESAI for Petitioners

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/03/2000

ORAL JUDGEMENT

#. It is clearly a litigation which exhibits how unscrupulous litigants can abuse the process of the court. The petitioners have taken loan from the Vijay Cooperative Bank Ltd. As this loan was not paid, the

respondent-Bank filed Lavad suit No.809 of 1984 before the learned Board of Nominees at Ahmedabad. In this suit the award was passed by the Board of Nominees on 26th April, 1984. The award is for Rs.1,99,290/=. It was taken to be an exparte award, the petitioner filed appeal before the Cooperative Tribunal. On 25th April, 1988, this appeal came to be allowed and the award of the Board of Nominees was set aside on the condition that the petitioners to deposit Rs.15,000/= on or before 24th May, 1988, failing which the award shall stand. As the petitioners wanted to only delay these proceedings, it has not complied with this order and filed special civil application No.5738 of 1988 before this court. This special civil application was withdrawn by petitioners on 16th June 1989. From the order of this court, it is clear that the court was not inclined to grant any indulgence to the petitioners and to give fresh life to this matter this writ petition has been withdrawn with a request that the petitioners will move an application before the Tribunal for extension of time to deposit the amount of Rs.15,000/=. Thereafter the application came to be filed by petitioners before the Tribunal and under the impugned order the Tribunal has declined to extend time for deposit of the amount. Hence this special civil application before this court.

#. The learned counsel for the petitioners contended that the Tribunal has committed serious error in rejecting the application for extension of time on the ground that this court has not given any direction to the Tribunal to extend the time. It has next been contended that because of financial constraints and difficulties, the petitioners could not deposit this amount of Rs.15,000/=. The Tribunal should have taken a justice oriented approach and time should have been extended for deposit of this amount. Lastly it is contended that the petitioners by now has deposited more than Rs.1 lac towards the awarded amount and this court may set aside the decree awarded by the learned Board of Nominees and give direction to the Board of Nominees to decide the matter on merits.

#. It is unfortunate that nobody is present on behalf of the Bank.

#. Having given my thoughtful considerations to the submissions made by learned counsel for the petitioners, I am satisfied that none of the grounds advanced by him have any merits and substance. It is clearly an attempt on the part of the petitioners to delay the recovery of the amount of loan which has been advanced by bank to the

petitioners. This loan amount is advanced to the entrepreneurs for development of the industry in the State as well as to provide employment. This amount has to be paid as per the schedule agreed upon between the parties so that this public money may roll and other entrepreneurs may be given benefits but the tendency in the country is developing that loans are not being repaid to the banks and other financial institutions, as a result of which, suits are to be filed for recovery of the amount and this increases courts' work where otherwise these all are avoidable litigations. The learned counsel for the petitioners is not correct in his contention that the Board of Nominees has passed an exparte award. Notice of the Lavad suit was received by petitioners. They filed written statement also but subsequently they have chosen not to participate in the proceedings and ultimately the Board of Nominees had no option except to proceed with the matter and pass appropriate award which precisely has been done in the present case. It is a case where the petitioners have themselves not availed of this opportunity given to them. The petitioners have not participated in the proceedings for the obvious reason that they have no defence whatsoever to the suit claim of the Bank. They deliberately did all these things so that they may have some points in their favour and ultimately if the award is passed against them it can be set aside by the appellate court or the application filed by them for setting aside of the exparte award is entertained. This conduct of the petitioners itself is sufficient for dismissal of this special civil application. Otherwise also, the Tribunal has not committed any error in not extending time in favour of the petitioners to deposit the amount of Rs.15,000/=. In fact, the Tribunal has earlier taken a very lenient view, otherwise, the appeal should have been dismissed on merits. A very nominal amount was ordered to be deposited by petitioners but the petitioners were not interested to pay a single pie. They wanted to keep the matter alive so that no amount can be recovered from them by the Bank. That is clearly borne out from the fact of filing of repeated litigations in this court or before the Tribunal. This court's order is there at page No.9, annexure-B. From reading of this order, I am satisfied that the writ petitioner is withdrawn for the obvious reason that this court was not inclined to grant any relief to the petitioner. In the facts and circumstances of the case, the Tribunal has passed a just and reasonable order and the petitioners do not deserve to be given any indulgence whatsoever and rightly it has not been granted. The order of the Tribunal passed on 25.4.88 is very clear. It was a

conditional order and where the amount of Rs.15,000/= is not deposited on or before 24.5.88, the award of the Board of Nominee has to stay.

#. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court, stands vacated. As none appeared for the respondent, no order as to costs.

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(sunil)